

**REMARKS**

In the Office Action, claims 1 - 11 and 13 - 75 were noted as pending in the application, with claims 45 - 59 having been withdrawn from consideration, and all remaining claims, namely claims 1 - 11, 13 - 44, and 60 - 75, were rejected. By this response, no claims have been added, claims 73 and 74 have been canceled, and no claims have been amended. Thus, claims 1 - 11, 13 - 44, 60 - 72, and 75 are under examination in the application. The rejections of the Office Action are traversed below.

**Rejection of Claims 11, 19, 37, 63, and 69 under 35 USC § 112**

In item 5, on pages 13 - 14 of the Office Action, claims 11, 19, 37, 63, and 69 were rejected under 35 USC § 112, first paragraph, as failing the enablement requirement. This rejection is respectfully traversed. 35 USC § 112, first paragraph, requires that the specification contain a written description of the invention and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art of the invention to make and use the same. The Applicants respectfully submit that the specification as filed sufficiently discloses the subject matter of claims 11, 19, 37, 63, and 69, as those claims pertain to staffing profiles, optimal staffing levels, and optimal combination/aggregation of employees based on performance data. See specification at page 16, lines 1 - 6; page 21, line 20 - page 22, line 8. Further, see Figs. 7d, 8b, and 8i and the specification describing and explaining the charts shown in these figures -- all of which are directed to fully enabling a person of ordinary skill in the art, in possession of the present specification and figures, to make and use the invention for determining the optimal level of staffing to attain the desired goals. Withdrawal of this rejection is respectfully requested.

**Rejection of Claims 73 and 74 under 35 USC § 101**

In item 7, on pages 15 - 16 of the Office Action, claims 73 and 74 were rejected under 35 USC § 101 as being directed to non-statutory subject matter. Without agreeing that the rejection of claims 73 and 74 under 35 USC § 101 is appropriate, claims 73 and 74 have been canceled herein, thereby rendering this rejection moot.

**Rejection of Claims 20 - 27, 38, 41 - 44, and 73 - 75 under 35 USC § 102**

In item 9, on pages 17 - 23 of the Office Action, claims 20 - 27, 38, 41 - 44, and 73 - 75 were rejected under 35 USC § 102(b) as being anticipated by “Winning Retail: A Self Assessment and Instructional Guide for Independent Retailers.” This rejection is respectfully traversed.

**The Claimed Invention**

Exemplary embodiments of the Applicants' invention are directed to a computer-implemented method and system for measuring and analyzing employee and store performance. The system and method include storing transactional data of store activity, receiving the transactional data to compute an aggregate synopsis of performance of a subject under observation, and hypothesizing to develop a hypothesis for store improvement and to determine at least one recommended action. The recommended actions are applied to the subject under consideration, and a change in store performance is measured as a result of applying the recommended actions. Specification at page 2, lines 17 - 27.

**The Winning Retail Reference**

The Winning Retail reference discloses a multi-chapter document, with chapters 1 (Retailing Strategy), 7 (Employee Development), 8 (Sales Management), 11 (Performance Evaluation), 12 (Computerization) being relied upon by the Office Action to reject the claims herein.

**The Winning Retail Reference is Not Prior Art Under 35 USC § 102(b) to this Application**

The present application was filed February 21, 2002, with priority under 35 USC § 119(e) to provisional application no. 60/270,563, filed February 21, 2001. Accordingly, a prior art reference under 35 USC § 102(b) must be a publication printed on or before February 21, 2000 and must disclose every element recited in the claims.

The Applicants respectfully submit that the Winning Reference is not a publication printed prior to February 21, 2000. The supplied Winning Reference is not, in fact, a single publication, but instead an undated and untitled collection of 5 chapters from some undisclosed reference, combined with a single front page which is clearly denoted as "Page 1 of 1" and is also clearly dated as "9/5/07." The front page includes an Internet address, which directs the browser to a document published in 2003. There is also a date of "1997" on the front page, but absolutely no evidence that the "1997" is somehow associated with the 5 selected chapters that follow the 9/5/07 front page.

The Applicants have reviewed the explanation presented in the present Office Action asserting that the Winning Retail is indeed a document published in 1997. However, the Applicants respectfully submit that the information in the present Office Action regarding the asserted publication date of the Winning Retail reference suffers from the same deficiencies as in the previous Office action; namely, that while separate documents may show that a reference entitled Winning Retail was published in 1997, there is no evidence that the document relied upon in the Office Action and supplied to the Applicants is the actual document, and contains the exact disclosure, as what may have been published in 1997. Accordingly, in the absence of the necessary evidence that clearly shows the cited Winning Reference document to have been published prior to February 21, 2000, withdrawal of this reference and accordingly, the rejections that rely on it, is respectfully requested.

**The Claimed Invention is Patentably Distinguishable Over the Winning Retail Reference, Notwithstanding Winning Retail's Lack of Standing as Prior Art**

The Applicants' claimed invention is directed to a computer-implemented method and system for measuring and analyzing store performance data. Collected store data is analyzed to compute a synopsis of the performance of a subject, such as a store employee, under observation. An improvement hypothesis is developed which determines at least one recommended action, and the recommended action(s) is applied to the subject. A change in store performance as a result of the subject applying the recommended action(s) is then measured. In this iterative process, increased performance and revenue can be identified in response to the applied

recommended actions. In particular, and reciting claim 20, this system and method include:

a transactional data store operable to store transactional data of store sales activity from a plurality of available data sources including field performance data, external data, legacy data and training data, the stored transactional data being indicative of performance of a store and performance of a subject under observation;

an analysis engine coupled to receive the transactional data from the data store, the analysis engine operable to compute an aggregate synopsis of performance of the subject under observation from the transactional data; and

a hypothesizer responsive to the analysis engine and operable to develop a hypothesis for store improvement and to determine at least one recommended action for the subject under observation from the aggregate synopsis, the at least one recommended actions directed to improving the performance of the store.

The Office Action relies on the Winning Retail reference as allegedly disclosing each of the elements recited in claim 20. However, a comparison of the cited sections of Winning Retail against the elements and features recited in claim 20 demonstrate the deficiencies of the Winning Retail as an alleged anticipatory reference to these claims. The present application discloses and claims a computer system for analyzing collected store transaction data to compute an aggregate synopsis of performance of a subject under observation. Winning Retail merely discusses tracking sales information, such as sales per hour, average sale, and items per sale (Ch. 8, page 6); examining and averaging daily and weekly store and employee performance (Ch. 8, pages 6 - 8); setting employee performance goals (Ch. 8, page 10); and generating statistics and reports (Ch. 11, pages 10 - 27). Many of these retail practices are presented in the background of the present application at page 1, line 8 - page 2, line 14. In Winning Retail, individual employee performance is manually written, summarized, and posted where everyone can see it, by the employees themselves (Ch. 8, pages 11-13). A multitude of reports are shown in Chapters 11 and 12, but nowhere in the Winning Retail is there a disclosure of “analyzing the collected transaction data to compute an aggregate synopsis of performance of a subject under observation.” Furthermore, while Winning Retail discusses various performance goals for employees, such as increasing sales (Ch. 8, pages 7 - 15), it is completely silent regarding how to take a computed “aggregate synopsis of performance” of an employee and “develop a hypothesis . . . from the aggregate synopsis . . . to determine at least one recommended actions.” For

example, the Office Action cites to Ch. 8, pages 6 and 7 as allegedly disclosing this feature. However, the cited portions merely point out:

Everyone must clearly understand the consequences of not achieving minimum expectations. This is not an exercise is (sic) developing an aptitude for terminating employees, but rather an opportunity to discover who is falling short on performance, before it is too late. Once you discover who isn't meeting expectations, you have the chance to devise a coaching plan that may include training, re-scheduling, etc.

. . . The question is how you go about getting that extra \$3 from each customer. You've got a few options:

1. Increase prices (not always advisable, but sometimes it can be done without losing business)
2. Selling more items to each customer
3. Selling the customer more expensive items

. . Here's a few ways you might increase your Items Per Sale:

1. Train your staff how to add on additional items

This portion of Winning Retail merely suggests several actions that could increase sales dollars from individual customers. Nothing is disclosed nor enabled regarding "develop a hypothesis for store improvement" from an aggregate synopsis and "determine at least one recommended action for the subject under observation . . directed to improving the performance of the store."

It is respectfully submitted that Winning Retail fails to disclose each of the features recited in independent claim 20; and, therefore, Winning Retail cannot reasonably be said to anticipate Applicants' claimed invention. Accordingly, for this additional reason, claim 20 is believed to be patentably distinguishable over the Winning Retail document, and it is respectfully requested that the rejection of claim 20 be withdrawn.

Claims 21 - 27, 38, and 41 - 44 depend from claim 20 and include all the features of claim 20 plus additional features which are not taught or suggested by the Winning Retail document. For example, claim 25 specifies a plurality of transactional data systems operable to gather the transactional data, which is neither taught nor suggested by Winning Retail. The

Office Action cites to Ch. 12 as allegedly teaching this feature, but the cited portion of Ch. 12 discloses only a point of sale system, an inventory system, and various reports, not the claimed plurality of systems for gathering transactional data, where the transactional data has been recited in the base claim as being data of store sales activity from such data sources as field performance data, external data, legacy data, and training data. Therefore, for at least this reason and the reasons set forth above with respect to claim 20, it is submitted that claims 21 - 27, 38, and 41 - 44 patentably distinguish over the Winning Retail document, and withdrawal of the rejection of claims 21 - 27, 38, and 41 - 44 is respectfully requested.

Claims 73 and 74 have been canceled herein, thereby rendering the rejection of those two claims moot. Further, the Office Action fails to cite where the Winning Retail reference discloses the features of claim 75, contrary to the requirements of 35 USC § 132, 37 CFR § 1.104(c); MPEP § 706. Accordingly, the Applicants are unable to respond to the rejection of claim 75 as being anticipated by Winning Retail, and, withdrawal of the rejection of claims 73 - 75 is respectfully requested.

#### **Rejection of Claims 73 - 75 under 35 USC § 102**

In item 11, on pages 24 - 25 of the Office Action, claims 73 - 75 were rejected under 35 USC § 102(e) as being anticipated by U.S. Patent No. 7,093,748 to Matsko et al. This rejection is respectfully traversed.

#### **The '748 Matsko Patent**

Matsko discloses a computer-based system for recording retail performance metrics at a point of sale terminal, including time intervals for scanning products (Matsko at Col. 4, lines 44 - 47; Col. 6, lines 17 - 21; Col. 10, lines 34 - 44). Control tests can be run with the system to compare two employee's performance against each other and can be used to assess a hardware component's upgrade effect on performance (Col. 11, lines 52 - 66). The system can further be used to run "live" experiments to test new hardware or software, and data captured by the system can be used to model different combinations of equipment and personnel (Col. 12, lines 49 - 67).

**The Claimed Invention is Patentably Distinguishable Over the '748 Matsko**

**Reference**

Claims 73 and 74 have been canceled herein, thereby rendering the rejection of those two claims moot.

Claim 75 is directed to a system for analyzing employee and store performance data. In particular, this system includes:

means for utilizing a plurality of available computer generated data and gathering therefrom sales transaction data indicative of store performance factors;

means for analyzing the gathered sales transaction data to compute an aggregate synopsis of performance of a subject under observation;

means for hypothesizing the improvement in store performance based on the computed aggregate synopsis, said hypothesizing means further determining at least one of a plurality of recommended actions;

means for applying the determined recommended actions to the subject under observation; and

means for measuring a change in the performance of the store as a result of application of the determined recommended actions.

The Office Action introduces the Matsko patent as allegedly disclosing each of the elements recited in claim 75. However, a review of the entire Matsko document, and in particular the cited portions of Matsko, demonstrate that Matsko fails to disclose or even suggest a computer system with the structure and functionality recited in claim 75. For example, claim 75 recites hypothesizing an improvement in store performance based on a computed aggregate synopsis of sales transaction data, the hypothesizing determining a recommended action. The determined recommended action is applied to the subject under observation, and a change in the performance of the store as a result of application of the determined recommended action is measured. The Office Action relies on columns 11 and 12 of the Matsko patent as allegedly disclosing these features. However, this portion of Matsko merely notes that the performance of two employees can be compared with the system, that reports from the system can reveal excessive scan time on a particular lane, and that experiments and modeling can be facilitated with the system and its recorded data. In contrast, rather than an experimental or a modeling trial and error approach, the recited system of claim 75 computes an aggregate synopsis of performance of a subject under observation, automatically hypothesizes improvement in store

performance based on the computed aggregate synopsis, determines and applies a recommended action, and measures a change in store performance based on the application of the recommended action.

In view of the foregoing, withdrawal of the rejection of claims 73 - 75 is respectfully requested.

### **Rejection of Claims 28 - 37 and 39 - 40 under 35 USC § 103**

In item 13, on pages 26 - 33 of the Office Action, claims 28 - 37 and 39 - 40 were rejected under 35 USC § 103 as being unpatentable over Winning Retail in view of U.S. Patent No. 6,119,097 to Ibarra. This rejection is respectfully traversed.

### **The Ibarra Patent**

Ibarra discloses a system for manually collecting data on how employees perform relative to department performance standards, based on employee problem-solving worksheets (abstract). An objective employee job performance standard is selected as a measure of an employee's job performance (Col. 2, lines 54 - 62). The employee is evaluated relative to standards information (Col. 6, lines 16-18). The standard for the employee is re-evaluated whenever the standard is not being met by the employee (Col. 7, line 54 - Col. 8, line 2). The standard is then replaced with a new standard which is selected to improve the employee's performance (Col. 8, lines 5 - 9).

### **The Claimed Invention is Patentably Distinguishable Over the Cited Documents**

Claims 28 - 37 and 39 - 40 depend from claim 20 and include all the features of claim 20 plus additional features which are not taught or suggested by the Winning Retail document. At the outset, the Applicants renew their traversal of Winning Retail as a prior art reference, as discussed more thoroughly above as regards the rejection under 35 USC § 102.

The Applicants' claimed invention is directed to a computer-implemented method and system for measuring and analyzing store performance data. Collected store data is analyzed to compute a synopsis of the performance of a subject, such as a store employee, under observation. An improvement hypothesis is developed which determines at least one recommended action,



and the recommended action(s) is applied to the subject.

In contrast, Ibarra is directed to the limited system of improving an employee's performance as measured against a job performance standard, even if it is necessary to select a lowered standard to be applied to the employee to achieve compliance (Ibarra at abstract; Col. 4, line 58 - Col. 5, line 6; Col. 7, line 54 - Col. 8, line 9). The process of selecting the standard and measuring the employee's performance against the standard is completely manual, and the goal of the process is to enable an employee to meet the original or the modified performance standards (abstract; Col. 2, lines 48 - 65).

In item 13, the Office Action introduces the Ibarra reference to allegedly cure some of the admitted deficiencies of the Winning Retail reference. However, Ibarra fails to remedy any of the deficiencies of the Winning Retail as discussed above regarding claim 20. Further, contrary to the assertions of the Office Action, Ibarra is directed solely to a manual employee performance evaluation system and is completely silent regarding the collection or analyzing of any store sales activity data. In fact, the only data, or information, referenced in the cited portion of Ibarra is employee performance standards information, all of which is manually entered by a manager (Ibarra at Col. 6, lines 16 - 20). Also, the only improvement in performance is aimed at the employee, not the store (Ibarra at Col. 6, line 61 - Col. 7, line 7). Finally, a computer is involved only to the extent that standards, employee scores, and information are manually entered into a computer, which can then print reports or summaries (Ibarra at Col. 8, line 50 - Col. 9, line 20).

The Office Action asserts on pages 28 - 33 that it would have been obvious to one skilled in the art at the time of the invention that the system and method as taught by Winning Retail would have benefited from the teachings of Ibarra. However, whether or not the retail strategies of Winning Retail could be combined with the manual employee performance evaluation system of Ibarra is moot because any such combination would still fail to teach all the elements recited in the claims herein. Further, any such combination would be a simple, non-enabled and manual strategy for improving an employee's job performance in a retail environment. Such a strategy fails to even suggest, much less render obvious, the complete and integrated computer-implemented system and method recited herein for measuring and analyzing store activity

transaction data for determining and applying recommended action(s) to a subject under observation.

For example, the Office Action on pages 28 admits that Winning Retail fails to disclose the claim 29/30 elements of determining a recommended action by mapping the aggregate synopsis to a recommended action and determining a ranking in the performance range and mapping the ranking into a predetermined list of recommended actions and then relies on Ibarra as allegedly teaching this feature. However, Ibarra is completely silent regarding defining a set of recommended actions directed at improving store productivity, much less performing mapping actions to determine recommended actions. Instead, Ibarra is expressly limited on its face to improving employee job performance: “identify and assign at least one objective activity to the employee which should enable the employee to meet the objective standards” (Ibarra at abstract); Performance Appraisal Summary (Ibarra at Fig. 6); “It is an object of the present invention to provide a method and apparatus for identification and tracking of human job performance factors.” (Ibarra at Col. 2, lines 34 - 36). “It is another object to provide a method and apparatus for identification of objective activities which can be performed to thereby improve job performance.” (Ibarra at Col. 2, lines 42 - 44).

The Office Action further takes official notice throughout pages 29 - 33 that various features recited in the claims are old and well known. The MPEP instructs the Patent Office that the taking of official notice is appropriate in only limited circumstances and should be used judiciously, not as a method for wholesale rejection of claim elements when no references can be found to teach the claim elements, as has been done in the present Office Action. MPEP § 2144.03. Accordingly, the Applicants respectfully traverse the frequent use of official notice in the present Office Action and request that documentary evidence of the asserted “old and well known” practices be provided in the next Office Action. The Office Action asserts on pages 8 - 9 that Applicants’ previous traversal, in their December 12, 2007 Amendment, of the frequent use of official notice was “inadequate.” The Applicants respectfully disagree. MPEP §2144.03(C) states: ***If Applicant Challenges a Factual Assertion as Not Properly Officially Noticed or Not Properly Based Upon Common Knowledge, the Examiner Must Support the Finding With Adequate Evidence*** (emphasis in original). This section further notes that “A

general allegation that the claims define a patentable invention without any reference to the examiner's assertion of official notice would be inadequate (emphasis added). The December 12, 2007 Amendment, as admitted by the Examiner, did expressly traverse the frequent use of Official Notice. Further §2144.03(C) cites to *In re Chevenard*, 139 F.2d 711 (C.C.P.A. 1943) as support for the rule that an Applicant must traverse the use of Official Notice and that the Examiner must respond with adequate evidence. *In re Chevenard* states that "... in the absence of any demand by appellant for the examiner to produce authority for his statement, we will not consider this contention." *Chevenard* at 713. The Court drew its support for this position from *In re Gunther*, 125 F.2d 1020 (C.C.P.A. 1942), which states:

Moreover, the examiner stated that it was well known in the art to use dry or superheated steam to avoid undue condensation and dilution of the cooking liquor. This statement was not challenged before the Patent Office. If appellant believed that the cited art did not disclose this, he could, under the rules of the Patent Office, have required an affidavit of the examiner supporting such statement. Having failed to do this, we must accept such statement of the examiner as correct.

The Applicants did expressly and sufficiently traverse the frequent and unsupported use of official notice in the previous Office Action in accordance with the MPEP and the caselaw underlying the MPEP. Therefore, the Applicants renew their request that adequate evidence be provided supporting the assertions of official notice throughout the Office Action, including the unsupported reliance on official notice throughout the present Office Action as an alternative to presenting evidence and/or documents disclosing the elements recited in the present claims.

For the reasons discussed above, Applicants respectfully submit that the Winning Retail/Ibarra combination fails to render obvious the features recited in claims 28 - 37 and 39 - 40. Each of these claims is believed to be patentably distinguishable over Winning Retail and Ibarra, either taken alone or in combination; and it is respectfully requested that the rejection of claims 28 - 37 and 39 - 40 be withdrawn.

**Rejection of Claims 1, 2, and 13 - 18 under 35 USC § 103**

In item 14, on pages 34 - 37 of the Office Action, claims 1, 2, and 13 - 18 were rejected under 35 USC § 103 as being unpatentable over U.S. Patent No. 7,093,748 to Matsko et al. in view of Capillo, "Sales Performance Accountability." This rejection is respectfully traversed.

**The Capillo Reference**

Capillo discloses a manual sales management practice of using the total number of customers visiting a retail store, divided into the revenue for the period (Capillo at par 2 - 3). The use of revenue per customer visit per salesperson permits individual salesperson accountability (pars 6 - 8). The article provides a case study where customer traffic is tracked, and the owner of the store can look for trends and measure the effectiveness of each member of his staff (pars 14 - 18).

**The Claimed Invention is Patentably Distinguishable Over the Cited Documents**

The Applicants' claimed invention is directed to a computer-implemented method and system for measuring and analyzing store performance data. Collected store data is analyzed to compute a synopsis of the performance of a subject, such as a store employee, under observation. An improvement hypothesis is developed which determines at least one recommended action, and the recommended action(s) is applied to the subject. A change in store performance as a result of the subject applying the recommended action(s) is then measured. In this iterative process, increased performance and revenue can be identified in response to the applied recommended actions. In particular, and reciting claim 1, this system and method include:

- collecting transaction data of store sales activity, utilizing a plurality of available data sources, the data comprising two or more of field performance data, external data, legacy data, and training data, and including customer visit count data, the collected transaction data being indicative of store performance factors;

- analyzing the collected transaction data to compute an aggregate synopsis of performance of a subject under observation;

- hypothesizing using the aggregate synopsis, said hypothesizing developing a hypothesis for store improvement, the hypothesis determining at least one of a plurality of recommended actions;

applying the determined recommended actions to the subject under observation;  
and  
measuring a change in the store performance as a result of the subject under observation applying the determined recommended actions.

The Office Action introduces the Matsko patent as allegedly disclosing each of the elements recited in claim 1. However, a review of the entire Matsko document, and in particular the cited portions of Matsko, demonstrate that Matsko fails to disclose or even suggest a computer-implemented method for measuring and analyzing store performance in the manner and with the functionality recited in claim 1. For example, claim 1 recites hypothesizing an improvement in store performance based on a computed aggregate synopsis of sales transaction data, the hypothesizing determining a recommended action. The determined recommended action is applied to the subject under observation, and a change in the performance of the store as a result of application of the determined recommended action is measured. The Office Action relies on the Matsko patent as allegedly disclosing every one of these features. However, the Matsko specification merely notes that the performance of two employees can be compared with the system, that reports from the system can reveal excessive scan time on a particular lane, and that experiments and modeling can be facilitated with the system and its recorded data. In contrast, rather than an experimental or a modeling trial and error approach, the recited system of claim 1 computes an aggregate synopsis of performance of a subject under observation, automatically hypothesizes improvement in store performance based on the computed aggregate synopsis, determines and applies a recommended action, and measures a change in store performance based on the application of the recommended action -- which are not disclosed by Matsko.

The Office Action introduces the Capillo reference to allegedly cure some of the admitted deficiencies of the Matsko references as regards the lack of customer visit count data in Matsko. However, while Capillo does discuss customer visit data and the use of revenue divided by customer visit data to measure salesperson performance, Capillo does not cure the deficiencies of Matsko discussed above.

Claims 2 and 13 - 18 depend from claim 1 and include all the features of claim 1 plus additional features which are not taught or suggested by the Winning Retail or the Capillo

documents. For example, claim 18 specifies that the hypothesizing further comprises hypothesizing business scenarios, and the recommended actions comprise strategies to improve business operations and staffing profiles for increased sales, which is neither taught nor suggested by Winning Retail or Capillo. The Office Action cites to Matsko at Cols 3, 11, and 12 as allegedly disclosing these features. However, at best Matsko discloses (1) using its system to run “live” experiments to test new hardware or software or to try different staffing arrangements and (2) using the captured data as input to simulation models. In contrast, rather than an experimental or a modeling trial and error approach, the claimed method hypothesizes actual business scenarios based on a computed aggregate synopsis of performance data and determines specific recommended strategies to improve business operations and increase sales -- not the experimental approach of Matsko to see if one approach is better than another one.

Therefore, for at least these reasons and the reasons set forth above with respect to claim 1, it is submitted that claims 2 and 13 - 18 patentably distinguish over the Winning Retail and the Capillo documents, whether taken alone or in combination, and withdrawal of the rejection of claims 1, 2, and 13 - 18 is respectfully requested.

#### **Rejection of Claims 3, 9 - 11, and 19 under 35 USC § 103**

In item 15, on pages 38 - 41 of the Office Action, claims 3, 9 - 11, and 19 were rejected under 35 USC § 103 as being unpatentable over U.S. Patent No. 7,093,748 to Matsko et al. in view of Capillo, “Sales Performance Accountability” and further in view of U.S. Patent No. 6,324,282 to McIllwaine et al. This rejection is respectfully traversed.

#### **The McIllwaine Patent**

McIllwaine discloses a method and system for delivery of individualized training to call center agents (McIllwaine at abstract). Agent interactions with customers on the telephone are recorded to provide a score of agent performance in each of several skill areas (Col. 2, lines 54 - 63). Training materials are assigned to the agents based on their score in skill areas corresponding to the particular training materials (Col. 2, lines 63 - 65).

**The Claimed Invention is Patentably Distinguishable Over the Cited Documents**

Claims 3, 9 - 11, and 19 depend from claim 1 and include all the features of claim 1 plus additional features which are not taught or suggested by the Matsko, Capillo, or McIllwaine documents. For example, claims 9 and 10 specify that timely performance goals are set corresponding to the subject under observation, adjusting the performance range in response to the performance goals, wherein the goals are set according to at least one of daily, weekly, monthly, quarterly and yearly intervals, none of which are taught or suggested by Winning Retail, Capillo, or McIllwaine. The Office Action relies on Matsko as allegedly teaching these elements but fails to cite where in Matsko such features are fully disclosed, contrary to the requirements of 35 USC § 132, 37 CFR § 1.104(c); and MPEP § 706.

Therefore, for at least these reasons and the reasons set forth above with respect to claim 1, it is submitted that claims 3, 9 - 11, and 19 patentably distinguish over the Winning Retail, Capillo, and McIllwaine documents, whether taken alone or in combination, and withdrawal of the rejection of claims 3, 9 - 11, and 19 is respectfully requested.

**Rejection of Claims 4 - 8 under 35 USC § 103**

In item 16, on pages 42 - 46 of the Office Action, claims 4 - 8 were rejected under 35 USC § 103 as being unpatentable over U.S. Patent No. 7,093,748 to Matsko et al. in view of Capillo, "Sales Performance Accountability," further in view of U.S. Patent No. 6,324,282 to McIllwaine et al., and further in view of U.S. Patent No. 6,119,097 to Ibarra. This rejection is respectfully traversed.

**The Claimed Invention is Patentably Distinguishable Over the Cited Documents**

Claims 4 - 8 depend from claim 1 and include all the features of claim 1 plus additional features which are not taught or suggested by the Matsko, Capillo, McIllwaine, or Ibarra documents. For example, claim 7 specifies that the performance standards further comprise a scaling matrix operable to scale the performance scores, the scaling matrix having scaling factors corresponding to store characteristics pertinent to the transaction data, which is neither taught nor suggested by any of the Winning Retail, Capillo, McIllwaine, or Ibarra documents, as admitted

by the Office Action. Instead, the Office Action takes official notice that the features of claims 7 and 8 are old and well known. The Applicants respectfully assert that the elements of claim 7 and 8, as combined with the features recited in the underlying base claim and the intervening claims is not old and well known. Accordingly, pursuant to MPEP § 2144.03(C), the Applicants respectfully request that prior art documentary evidence be provided that supports the assertion of official notice.

Therefore, for at least these reasons and the reasons set forth above with respect to claim 1, it is submitted that claims 4 - 8 patentably distinguish over the Winning Retail, Capillo, McIllwaine, and Ibarra documents, whether taken alone or in combination, and withdrawal of the rejection of claims 4 - 8 is respectfully requested.

#### **Rejection of Claims 60 - 63 under 35 USC § 103**

In item 17, on pages 47 - 50 of the Office Action, claims 60 - 63 were rejected under 35 USC § 103 as being unpatentable over U.S. Patent No. 6,324,282 to McIllwaine et al. in view of U.S. Patent No. 6,119,097 to Ibarra and further in view of U.S. Patent No. 7,093,748 to Matsko et al. This rejection is respectfully traversed.

#### **The Claimed Invention is Patentably Distinguishable Over the Cited Documents**

The Applicants' claimed invention is directed to a computer-implemented method for gathering and analyzing store performance data. Gathered store data is analyzed to determine a ranking of employee performance. A set of recommended actions directed at improving store productivity is defined, and a ranking is correlated with the set of recommended actions, with at least one of the recommended actions being implemented. Productivity improvement of the store resulting from implementation of the action is then measured. In this iterative process, a staffing profile can be defined and implemented that is indicative of an optimal combination of employees based on the performance data. In particular; and reciting claim 60, this system and method include:

gathering transaction data of store sales activity from a plurality of available computer data sources, the data including at least one of external data, legacy data, field



performance data, and training data, and including sales activity corresponding to at least one employee;

analyzing the gathered transaction data to determine a ranking of employee performance, the gathered transaction data indicative of revenue generation and skill proficiency of each of the at least one employee;

defining a set of recommended actions directed at improving store productivity as a function of skill proficiency and revenue generation;

correlating the ranking with the set of recommended actions;

implementing, based on the correlating, at least one of the recommended actions;  
and

measuring productivity improvement of the store resulting from the implementing of the at least one recommended actions.

The Office Action relies on the McIllwaine patent as allegedly disclosing each of the elements recited in claim 60. However, the McIllwaine patent is directed to a system and method for delivery of individualized training to call center agents, based on the calls received and handled by each call center agent and training materials in a call center database.

McIllwaine is completely silent regarding gathering transaction data of store sales activity, the data including at least one of external data, legacy data, field performance data, and training data and including sales activity corresponding to at least one employee, wherein the gathered transaction data is indicative of revenue generation and skill proficiency of the employee.

Instead, the cited portions of McIllwaine disclose that the gathered data is information from the phone call itself, such as customer information, not revenue generation or skill proficiency of the employee. Many of the cited portions of McIllwaine focus on the training materials available to the call center employee, which makes sense because the McIllwaine patent is directed to the delivery of training material to call center agents. In contrast, the computer-implemented method of claim 60 is directed to measuring productivity improvement of a sales store based on implementation of a recommended action out of a set of recommended actions that have been defined based on employee revenue generation and skill proficiency.

Claims 61 - 63 depend from claim 60 and include all the features of claim 60 plus additional features which are not taught or suggested by the McIllwaine, Ibarra, or Matsko documents. Therefore, for at least these reasons and the reasons set forth above with respect to claim 60, it is submitted that claims 61 - 63 patentably distinguish over the McIllwaine, Ibarra,

and Matsko documents, whether taken alone or in combination, and withdrawal of the rejection of claims 60 - 63 is respectfully requested.

**Rejection of Claims 64 - 72 under 35 USC § 103**

In item 18, on pages 51 - 56 of the Office Action, claims 64 - 72 were rejected under 35 USC § 103 as being unpatentable over U.S. Patent No. 6,324,282 to McIllwaine et al. in view of U.S. Patent No. 7,093,748 to Matsko et al. This rejection is respectfully traversed.

**The Claimed Invention is Patentably Distinguishable Over the Cited Documents**

The Applicants' claimed invention is directed to a computer-implemented method for assessing and improving the performance of a store. Data indicative of the revenue generating performance of an employee is gathered, aggregated, and stored. Quantitative reports indicative of revenue performance of the employee are generated, and a performance ranking for the employee is determined based on the reports. Areas for employee improvement are identified based on the performance ranking, which are then mapped into a predetermined list of recommended actions for improving employee skills. The recommended actions are implemented, and the effect of the implemented actions on revenue generating performance of the employees and the store is measured. In particular, and reciting claim 64, this method includes:

- gathering, via a sales transactional data interface, from a plurality of available computer data sources, at least one of field performance data, legacy data, training data, and transactional data, the gathered data indicative of the revenue generating performance of at least one subject employee;

- aggregating and storing, via a data store, the gathered transactional data;

- generating, via an analysis engine, quantitative reports indicative of aggregate revenue generating performance of each of at least one subject employee;

- determining, based on the quantitative reports and a performance range, a performance ranking corresponding to each of at least one subject employee;

- identifying, via a hypothesizer for improving store performance, areas for improvement for each at least one subject employee based on the performance ranking;

- mapping, via a qualitative mapping engine, the identified areas for improvement into a predetermined list of recommended actions, the recommended actions for at least improving proficiency of skills;

implementing, via a learning center, the mapped recommended actions; and measuring, via subsequently gathered transactional data, the effect of the mapped recommended actions on the revenue generating performance of the employees and the store.

The Office Action relies on the McIllwaine patent as allegedly disclosing each of the elements recited in claim 64. However, the McIllwaine patent is directed to a system and method for delivery of individualized training to call center agents, based on the calls received and handled by each call center agent and training materials in a call center database. McIllwaine is completely silent regarding gathering, aggregating, and storing sales transaction data, the data indicative of the revenue generating performance of at least one employee, wherein quantitative reports indicative of aggregate revenue generating performance of the employee are generated. Nor does McIllwaine disclose measuring the effect of implementing recommended actions on the revenue generating performance of the employee and the store, the recommended actions being mapped from a predetermined list of recommended actions for improving proficiency of skills. Instead, the cited portions of McIllwaine disclose that the gathered data is information from the phone call itself, such as customer information, not the revenue generation proficiency of the employee. Many of the cited portions of McIllwaine focus on the training materials available to the call center employee, which makes sense because the McIllwaine patent is directed to the delivery of training material to call center agents. In contrast, the computer-implemented method of claim 64 is directed to measuring the effect of implementing mapped recommended actions on the revenue generating performance of the employee and the store. The Matsko patent is relied upon in the Office Action to allegedly remedy several of the deficiencies of the McIllwaine patent. However, the Applicants respectfully submit that the Matsko patent also fails to disclose the features recited in claim 64. In particular, Matsko is limited to comparing the performance of two salespersons (Col. 11, lines 52 - 55); conducting live experiments to test new hardware, new software, or different staffing arrangements (Col. 12, lines 49 - 51); and using the recorded data as input to simulation models. In other words, the system of Matsko can test or model possible solutions or reconfigurations, in stark contrast to the method recited in claim 64 for automatically identifying and mapping recommended actions for improving store performance.

Claims 65 - 72 depend from claim 64 and include all the features of claim 64 plus additional features which are not taught or suggested by the McIlwaine or Matsko documents. Therefore, for at least these reasons and the reasons set forth above with respect to claim 64, it is submitted that claims 65 - 72 patentably distinguish over the McIlwaine and Matsko documents, whether taken alone or in combination, and withdrawal of the rejection of claims 64 - 72 is respectfully requested.


### Summary

It is submitted that none of the documents, either taken alone or in combination, teach the claimed invention. Thus, claims 1 - 11, 13 - 44, 60 - 72, and 75 are deemed to be in a condition suitable for allowance. Reconsideration of the claims and an early Notice of Allowance are earnestly solicited.

If any fees are required in connection with this Amendment, please charge the same to our Deposit Account No. 50-4047.

Respectfully submitted,

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